

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STRUCTURE PROBE INC.,

Plaintiff,

v.

EMS ACQUISITION CORP. (D/B/A,
ELECTRON MICROSCOPY SCIENCES).

Defendant.

Civil Action No. 07-CV-3893 (LBS)

Judge Leonard B. Sand

**AFFIDAVIT OF RAYMOND J. DOWD IN SUPPORT OF
DEFENDANT EMS's MOTION TO DISMISS FOR LACK OF PERSONAL
JURISDICTION AND IMPROPER VENUE
OR, IN THE ALTERNATIVE, TO TRANSFER**

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

1. I am a member of the bar of this Court and of the law firm of Dunnington, Bartholow & Miller, LLP, counsel to Defendant EMS Acquisition Corp. d/b/a, Electron Microscopy Sciences ("EMS") in this matter. I submit this affidavit in support of EMS's motion to dismiss for lack of personal jurisdiction and improper venue pursuant to Fed.R.Civ.P. 12(b)(2) and (3) and motion pursuant to 28 U.S.C. § 1404(a) for an order transferring this action to the Eastern District of Pennsylvania.

2. Attached hereto are the following Exhibits:

Exhibit A: Copy of the Complaint.

Exhibit B: Copy of the Declaratory Judgment Complaint filed in the Eastern District of Pennsylvania.

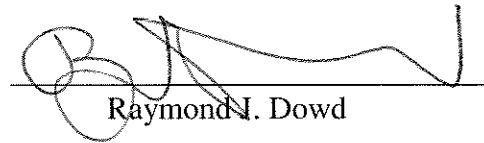
Exhibit C: Copy of the Amended Declaratory Judgment Complaint filed in the Eastern District of Pennsylvania.

Exhibit D: Two pages printed from the Internet site of plaintiff Structure Probe, Inc. (“SPI”), stating that “Structure Probe, Inc. and SPI Supplies has only one physical point, or nexus, which happens to be our headquarters in Pennsylvania.” *See* <http://www.2spi.com/order/salestax-usa-customers.html>.

Exhibit E: Declaration of Stacie G. Kirsch sworn to on September 19, 2007 (“Kirsch Dec.”).

Exhibit F: Two pages printed from the Internet site of the U.S. Courts, showing the 2006 Judicial Caseload Profile for the Southern District of New York and the Eastern District of Pennsylvania. *See* <http://www.uscourts.gov/cgi-bin/cmsd2006.pl>.

Exhibit G: A copy of (888) *Justice, Inc. v. Martin & Assoc., LLC*, No. 06 CV 6410 (GBD), 2007 U.S. Dist. LEXIS 61849 (S.D.N.Y. Aug. 22, 2007).


Raymond N. Dowd

Sworn to before me this
20 day of September, 2007


Notary Public

Lawrence D. Mandelker
Notary Public New York State
No. 02MA6117539
Qualified Bronx County
Expiration 11/1/08